

13-2101. Definitions

In this chapter, unless the context otherwise requires:

1. "Cancelled or revoked credit card" means a credit card that is no longer valid because permission to use it has been suspended, revoked or terminated by the issuer of the credit card by written notice sent by certified or registered mail addressed to the person to whom the credit card was issued at the person's last known address. Proof that the written notice has been deposited as certified or registered matter in the United States mail addressed to the person to whom the credit card was issued at the person's last known address gives rise to an inference that the written notice has been given to the cardholder.

2. "Cardholder" means any person who is either:

(a) Named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer.

(b) In possession of a credit card with the consent of the person to whom the credit card was issued.

3. "Credit card" means:

(a) Any instrument or device, whether known as a credit card, charge card, credit plate, courtesy card or identification card or by any other name, that is issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value, either on credit or in possession or in consideration of an undertaking or guaranty by the issuer of the payment of a check drawn by the cardholder, on a promise to pay in part or in full therefor at a future time, whether or not all or any part of the indebtedness that is represented by the promise to make deferred payment is secured or unsecured.

(b) A debit card, electronic benefit transfer card or other access instrument or device, other than a check that is signed by the holder or other authorized signatory on the deposit account, that draws funds from a deposit account in order to obtain money, goods, services or anything else of value.

(c) A stored value card, smart card or other instrument or device that enables a person to obtain goods, services or anything else of value through the use of value stored on the card, instrument or device.

(d) The number that is assigned to the card, instrument or device described in subdivision (a), (b) or (c) of this paragraph even if the physical card, instrument or device is not used or presented.

4. "Expired credit card" means a credit card that is no longer valid because the term shown on the credit card has elapsed.

5. "Incomplete credit card" means a credit card on which part of the matter, other than the signature of the cardholder, which an issuer requires to appear before it can be used by a cardholder, has not been stamped, embossed, imprinted or written.

6. "Issuer" means any business organization, state agency or financial institution, or its duly authorized agent, that issues a credit card.

7. "Merchant" means a person who is authorized under a written contract with a participating party to furnish money, goods, services or anything else of value on presentation of a credit card by a cardholder.

8. "Participating party" means a business organization or financial institution that is obligated or permitted by contract to acquire by electronic transmission or other means from a merchant a sales slip or sales draft or instrument for the payment of money evidencing a credit

card transaction and from whom an issuer is obligated or permitted by contract to acquire by electronic transmission or other means such sales slip, sales draft or instrument for the payment of money evidencing a credit card transaction.

9. "Receives" or "receiving" means acquiring possession or control of a credit card or accepting a credit card as security for a loan.

10. "Reencoder" means an electronic device that places encoded information from the magnetic strip or stripe of a credit card onto the magnetic strip or stripe of a different credit card.

11. "Scanning device" means a scanner, reader or other electronic device that is used to access, read, scan, obtain, memorize, transmit or store, temporarily or permanently, information that is encoded on a magnetic strip or stripe of a credit card.

13-2102. Theft of a credit card or obtaining a credit card by fraudulent means; classification

A. A person commits theft of a credit card or obtaining a credit card by fraudulent means if the person:

1. Controls a credit card without the cardholder's or issuer's consent through conduct prescribed in section 13-1802 or 13-1804; or

2. Sells, transfers or conveys a credit card with the intent to defraud; or

3. With intent to defraud, obtains possession, care, custody or control over a credit card as security for debt.

B. Theft of a credit card or obtaining a credit card by fraudulent means is a class 5 felony.

13-2103. Receipt of anything of value obtained by fraudulent use of a credit card; classification

A. A person, being a third party, commits receipt of anything of value obtained by fraudulent use of a credit card by buying or receiving or attempting to buy or receive money, goods, services or any other thing of value obtained in violation of section 13-2105, knowing or believing that it was so obtained.

B. Receipt of anything of value obtained by fraudulent use of a credit card is a class 1 misdemeanor if the value of the property bought or received or attempted to be bought or received is less than two hundred fifty dollars. If the value of the property bought or received or attempted to be bought or received is two hundred fifty dollars or more but less than one thousand dollars the offense is a class 6 felony. If the value of the property bought or received or attempted to be bought or received is one thousand dollars or more the offense is a class 5 felony. Amounts obtained by fraudulent use of a credit card pursuant to one scheme or course of conduct, whether from one or several persons, may be aggregated in determining the classification of offense.

13-2104. Forgery of credit card; classification

A. A person commits forgery of a credit card if the person:

1. With intent to defraud, alters any credit card, falsely makes, manufactures, fabricates or causes to be made, manufactured or fabricated an instrument or device purporting to be a credit card without the express authorization of an issuer to do so, or falsely embosses or alters a credit card, or instrument or device purporting to be a credit card, or utters such a credit card or instrument or device purporting to be a credit card; or

2. Other than the cardholder, with intent to defraud, signs the name of any actual or fictitious person to a credit card or instrument for the payment of money which evidences a credit card transaction.

B. Forgery of a credit card is a class 4 felony.

13-2105. Fraudulent use of a credit card; classification

A. A person commits fraudulent use of a credit card if the person:

1. With intent to defraud, uses, for the purposes of obtaining or attempting to obtain money, goods, services or any other thing of value, a credit card or credit card number obtained or retained in violation of this chapter or a credit card or credit card number which the person knows is forged, expired, cancelled or revoked; or

2. Obtains or attempts to obtain money, goods, services or any other thing of value by representing, without the consent of the cardholder, that the person is the holder to a specified card or by representing that the person is the holder of a credit card and the card has not in fact been issued.

B. Fraudulent use of a credit card is a class 1 misdemeanor. If the value of all money, goods, services and other things of value obtained or attempted to be obtained in violation of this section is two hundred fifty dollars or more but less than one thousand dollars in any consecutive six-month period the offense is a class 6 felony. If the value of all money, goods, services and other things of value obtained or attempted to be obtained in violation of this section is one thousand dollars or more in any consecutive six-month period the offense is a class 5 felony.

13-2106. Possession of machinery, plate or other contrivance or incomplete credit card; classification

A. A person commits possession of machinery, plate or other contrivance or incomplete credit card if such person:

1. Possesses an incomplete credit card with intent to complete it without the express consent of the issuer.

2. Possesses, with intent to defraud and with knowledge of its character, any machinery, plate or any other contrivance designed to reproduce an instrument or device purporting to be the credit card of an issuer who has not consented to the preparation of such credit card.

B. Possession of machinery, plate or other contrivance or incomplete credit card in subsection A, paragraph 1 is a class 1 misdemeanor and a class 6 felony in subsection A, paragraph 2.

13-2107. False statement as to financial condition or identity; classification

A. A person commits false statement as to financial condition or identity if the person makes or causes to be made, either directly or indirectly, any false statement in writing as to a material fact, knowing it to be false, with the intent that it be relied on respecting the identity of that person or of any other person, firm or corporation or the financial condition of that person or of any other person, firm or corporation, for the purpose of procuring the issuance of a credit card.

B. False statement as to financial condition or identity is a class 5 felony.

13-2108. Fraud by person authorized to provide goods or services; classification

A. A person commits fraud by a person authorized to provide goods or services if such person knowingly:

1. Furnishes money, goods, services or any other thing of value upon presentation of a credit card obtained or retained in violation of section 13-2102 or a credit card which such person knows is forged, expired, cancelled or revoked.

2. Fails to furnish money, goods, services or any other thing of value which such person represents in writing to the issuer or a participating party that such person has furnished, and who receives any payment therefor.

B. Except as provided in subsections C and D, fraud by a person authorized to provide goods or services in subsection A, paragraphs 1 and 2 is a class 1 misdemeanor.

C. If the payment received by the person for all money, goods, services or other things of value furnished in violation of subsection A, paragraph 1 exceeds one hundred dollars in any consecutive six-month period, the offense is a class 6 felony.

D. If the difference between the value of all monies, goods, services or any other thing of value actually furnished and the payment or payments received by the person therefor upon such representation in violation of subsection A, paragraph 2 exceeds one hundred dollars in any consecutive six-month period, the offense is a class 6 felony.

13-2109. Credit card transaction record theft; classification

A. A person commits credit card transaction record theft by:

1. If the person is a merchant, knowingly presenting for payment to a participating party, with intent to defraud, a credit card transaction record of a sale that was not made by the merchant.

2. Knowingly and without the participating party's authorization commanding, encouraging, requesting or soliciting a merchant to present for payment to the participating party a credit card transaction record of a sale that was not made by the merchant.

B. In order to determine the classification of the offense, the state may aggregate in the indictment or information amounts that were taken from one or more persons in credit card transaction record theft that was committed pursuant to one scheme or course of conduct.

C. Credit card transaction record theft with a value of twenty-five thousand dollars or more is a class 2 felony. Credit card transaction record theft with a value of at least three thousand dollars but less than twenty-five thousand dollars is a class 3 felony. Credit card transaction record theft with a value of at least two thousand dollars but less than three thousand dollars is a class 4 felony. Credit card transaction record theft with a value of at least one thousand dollars but less than two thousand dollars is a class 5 felony. Credit card transaction record theft with a value of at least five hundred dollars but less than one thousand dollars is a class 6 felony. Credit card transaction record theft with a value of less than five hundred dollars is a class 1 misdemeanor.

D. A person who is convicted of a violation of this section that involved an amount of at least one hundred thousand dollars is not eligible for suspension of sentence, probation, pardon, or release from confinement on any other basis except pursuant to section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. **13-2110. Unlawful possession or**

use of scanning device or reencoder; classification

A. It is unlawful for a person to use a scanning device or reencoder without the permission of the cardholder of the credit card from which the information is being scanned or reencoded and with the intent to defraud the cardholder, the issuer or a merchant.

B. It is unlawful for a person to intentionally or knowingly make or possess with the intent to commit fraud any device, apparatus, equipment, software, article, material, good, property or supply that is specifically designed or adapted for use as or in a scanning device or a reencoder.

C. Subsection B does not apply to peace officers or prosecutors in the performance of their duties.

D. A person who violates this section is guilty of a class 6 felony.